

## **REMARKS**

### **I. Introduction**

As a result of this response, claims 12-22 of the present application are pending and claims 15 and 22 are amended. Claims 12-14 have been rejected.

In view of the following remarks, it is respectfully submitted that claims 12-22 are allowable, and reconsideration of these claims is respectfully requested.

### **II. Objection to Claims 15-22**

The Examiner has objected to claims 15-22 as being dependent upon a rejected base claim, but the Examiner has indicated that claims 15-22 would be allowable if rewritten in independent form including all the limitations of corresponding parent claims and any intervening claims.

In response, the Applicants have amended claims 15 and 22 to be in independent form including all the limitations of base claim 12. Therefore, independent claims 15 and 22, as well as claims 16-21 which depend on allowable independent claim 15, are in allowable condition.

### **III. Rejection of Claims 12-14 Under 35 U.S.C. § 102(b)**

Claims 12-14 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent Application Publication No. 2001/0046926A1 to Adachi et al. (hereinafter “the Adachi reference”). The Applicants respectfully traverse this rejection, for the following reasons.

To anticipate a claim under § 102(b), a single prior art reference must identically disclose each and every claim element. See Lindeman Machinenfabrik v. American Hoist and Derrick, 730 F.2d 1452, 1458 (Fed. Cir. 1984). If any claimed element is absent from a prior art reference, it cannot anticipate the claim. See Rowe v. Dror, 112 F.3d 473, 478 (Fed. Cir. 1997). Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claim invention, arranged exactly as in the claim. Lindeman, 703 F.2d 1458 (Emphasis added). Additionally, not only must each of the claim limitations

be identically disclosed, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed invention, namely the inventions of the rejected claims, as discussed above. See Akzo, N.V. v. U.S.I.T.C., 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986). To the extent that the Examiner may be relying on the doctrine of inherent disclosure for the anticipation rejection, the Examiner must provide a “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” (See M.P.E.P. § 2112; emphasis in original; see also Ex parte Levy, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990)).

Independent claim 12 recites a “*method for controlling a speed of a vehicle, comprising: when an actual speed of the vehicle exceeds a predefined setpoint speed by more than a first predefined speed difference, activating a service brake of the vehicle, wherein the first predefined speed difference has a value greater than zero.*” The Adachi reference does not identically disclose, or even suggest, at least the above-identified claim features. Specifically, the Adachi reference does not identically disclose, or even suggest, activating the service brake when the actual vehicle speed exceeds the setpoint speed by a predefined speed difference. Although the Office Action indicates that the Adachi reference discloses the above-recited feature at page 1, paragraph 0021, the cited paragraph of the Adachi reference merely states that “[v]ehicle speed control block 500 receives signals from ... a vehicle speed sensor 10 ... According to the signals received, vehicle speed control block 500 calculates various command values and outputs these command values to ... a brake actuator 50 ... to control an actual vehicle speed at a target vehicle speed.” In this regard, Adachi reference’s disclosure regarding controlling an actual vehicle speed at a target vehicle speed, based on a signal received from a vehicle speed sensor, does not teach, or even suggest, the claimed feature of activating the service brake when the actual vehicle speed exceeds the setpoint speed by more the predefined speed difference. More particularly, merely stating that an actual speed is controlled at a target speed does not disclose anything about when a supposed corresponding control mechanism is activated, i.e., the disclosure of Adachi has nothing to do with activating the service brake when the actual vehicle speed exceeds the setpoint speed by more the predefined speed difference. The cited portion of the Adachi reference merely states, in a general way, that the actual speed is controlled to be at a target speed, but this does not disclose anything about a difference between the actual vehicle speed and the setpoint speed. Even if one assumes that a supposed control mechanism of the Adachi reference becomes activated at some instance, this does not

disclose a control mechanism becoming activated at a certain predefined instance, i.e., when the actual vehicle speed of exceeds the setpoint speed by more than the predefined speed difference, as claimed. Thus, the Adachi reference does not identically disclose, or even suggest, activating the service brake when the actual vehicle speed exceeds the setpoint speed by more than the predefined speed difference.

Additionally, the Adachi reference does not identically disclose, or even suggest, that the predefined speed difference has a value greater than zero, as acknowledged by the Examiner. However, the Examiner further states that “*the speed difference taught in Adachi et al. is clearly a target value which is greater than zero ... Therefore, Adachi et al. inherently discloses the predefined speed difference has a value greater than zero,*” referring to the Adachi reference at page 2, paragraphs 0023 and 0024. The Applicants respectfully submit that the Examiner has not provided any “basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics necessarily flow from the teachings of the applied art.” The claimed predefined speed difference which is greater than zero represents a trigger point at which the service break is activated, i.e., the predefined speed difference is a quantity which is not simply always equal to the difference between the actual speed and the setpoint speed, but is instead a particular value among all possible speed differences between the actual speed and the setpoint speed at which the service break is activated. By contrast, the cited sections of the Adachi reference are merely directed toward adjusting a target speed to which the Adachi reference attempts to control the actual speed. Furthermore, adjusting the target speed will only adjust an instantaneous value of the speed difference between the actual speed and the target speed, and won’t adjust the trigger point, i.e., the particular value among all possible speed differences at which the service break is activated. Moreover, as discussed above, the Adachi reference does not even teach a predefined speed difference which acts as a trigger point, let alone a non-zero predefined speed difference. Thus, the Adachi reference does not identically disclose, or even suggest, that the predefined speed difference has a value greater than zero.

Therefore, the Adachi reference fails to identically disclose, or even suggest, every element of independent claim 12. For at least this reason, independent claim 12 and its dependent claims 13-14 are patentable under 35 U.S.C. § 102(b). Thus, withdrawal of the rejection against these claims is respectfully requested.

**CONCLUSION**

Applicants respectfully submit that all pending claims of the present application are now in condition for allowance. Prompt reconsideration and allowance of the present application are therefore earnestly solicited.

The Office is authorized to charge any fees associated with this Amendment to Kenyon & Kenyon LLP's Deposit Account No. 11-0600.

Respectfully submitted,

 (K.No. 36,197)

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